

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,	)	
Plaintiff/Defendant-in-Counterclaim	)	
	)	
v.	)	Civil Action No. 05-CV-10506 (WGY)
	)	
J.P. MORGAN CHASE BANK, as Trustee for	)	
the Registered Holders of Credit Suisse First	)	
Boston Mortgage Securities Corp., Commercial	)	
Mortgage Pass-Through Certificates,	)	
Series 1999-C1	)	
Defendant	)	
	)	
and CSFB 1999 – C1 ROYALL STREET, LLC	)	
Defendant/Plaintiff-in-Counterclaim	)	
	)	
and	)	
	)	
WILLIAM LANGELIER and	)	
GERALD FINEBERG	)	
Defendants-in-Counterclaim	)	
	)	

**MOTION-IN-LIMINE TO BAR TESTIMONY OF  
ERIC S. STOTZ ON IMPACT OF PARKING GARAGE**

Blue Hills Office Park LLC, William Langelier and Gerald Fineberg (collectively, “Blue Hills”) hereby move that any testimony from Eric S. Stotz (“Stotz”) as to the impact of a parking garage adjacent to land and buildings thereon located at 150 Royall Street, Canton, Massachusetts (“Property”) on the valuation of the Property be barred. Further, Stotz should not be permitted to testify as to any valuation in which his opinions regarding the putative impact of the adjacent garage are a component.

In further support of this Motion, Blue Hills avers and assets as follows:

1. In the Expert Report of Eric S. Stotz (the "Stotz Report"), Stotz states that he "was asked to give an opinion of the impact on value, if any, of a parking garage built in conjunction with the property located adjacent to the west of the subject property." Stotz Report, p. 2. A true copy of the Stotz Report (minus exhibits) is attached hereto and incorporated herein as Exhibit "A". Stotz provides the conclusory and unsupported opinion that "any structure that is built that interferes with the view of another structure from a major highway, or any structure that add [sic] significantly to the traffic congestion in an area, will have a detrimental impact on the value of the existing structure." Exhibit "A", Stotz Report, p. 13. Stotz is adamant that the construction of the garage on adjacent land "will have a negative impact" on the value of real property and a building thereon located at 150 Royall Street, Canton, Massachusetts (the "Property"). However, although this purported negative impact is a factor in his valuation analysis, he cannot quantify the effect of such alleged negative impact on the Property nor will he identify the weight and role of such opinion in his valuation. See Deposition Transcript of Eric Stotz dated April 21, 2006 ("Stotz Deposition"), p. 88, lines 18-19 and p. 90, lines 15-19, attached hereto and incorporated herein as Exhibit "B".

2. At his deposition, Stotz all but admitted that his opinion on the adjacent garage is not based on recognized or reliable methodologies or that he has any relevant expertise. Stotz opines on traffic issues, but admits that he did not consult with a traffic consultant nor did he do any traffic studies. Stotz Deposition, p. 95, lines 11-12, attached hereto and incorporated herein as Exhibit "C". The sole source of his opinion regarding traffic that is identified with even a modicum of specificity is the Complaint filed by Blue Hills against the Town of Canton, Zoning Board of Appeals in Norfolk Superior Court Civil Action No. 2003-01051. Stotz Deposition, p. 95, lines 16-24 through p. 96, lines 1-3, attached hereto and incorporated herein as Exhibit "D".

Moreover, Stotz did not conduct any measurements to determine how much of the view from inside the Property may have been obstructed. Stotz Deposition, p. 102, lines 3-6, attached hereto and incorporated herein as Exhibit “E”. Stotz has not identified any learned treatises or professional journals in support of his apparently intuitive opinions. Exhibit “A”, Stotz Report, p. 13. In the main, his opinion is based on “[g]eneral conversations with those in real estate.”

Stotz Deposition p. 99, lines 4-10 attached hereto and incorporated herein as Exhibit “F”.

Curiously, despite his use of the garage as an unquantified yet allegedly significant factor in his valuation of the Property. Stotz failed to acknowledge the alleged significance of the garage in his pre-foreclosure appraisal report prepared for LNR. Stotz Deposition, p. 87, line 12 through p. 88, line 19, attached hereto and incorporated herein as Exhibit “G”.

3. Stotz’s opinion as to any alleged impact the adjacent parking garage has on the value of the Property has neither a cognizable professional basis nor a modicum of reliability. The Supreme Court asserted in *Daubert* that trial courts perform a “gatekeeping” role in regulating the admission of expert testimony under Fed. R. Evid. 701. 509 U.S. at 589-95 (1993). That screening function entails a preliminary evaluation of the proffered expert testimony for both reliability and relevance. *See, Daubert*, 509 U.S. 579, 591-95; *Ruiz-Troche v. Pepsi Cola of Puerto Rico Bottling Co.*, 161 F.3d 77, 80 (1<sup>st</sup> Cir. 1998) (citing *Daubert*). The review for reliability encompasses an assessment of “whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.” *Daubert*, 509 U.S. at 592-93. As to the relevancy criterion, “expert testimony must be relevant not only in the sense that all evidence must be relevant, but also in the incremental sense that the expert’s proposed opinion, if admitted, likely would assist the trier of fact to understand or determine a fact in issue.” *Ruiz-Troche*, 161 F.3d

at 81 (citation omitted) (citing *Daubert*, 509 U.S. at 591-92). The *Daubert* reliability requirement applies to all expert testimony, not merely scientific testimony. *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999).

4. Stotz admits that the basis for his opinion on the impact of the garage on the Property's value was "various discussions with other real estate professionals." Exhibit "A" Stotz Report, p. 13. At his deposition, he indicated that his opinion was based on "general conversations with those in real estate." Stotz Deposition, p. 99, attached hereto and incorporated herein as Exhibit "H". Mere anecdotal evidence is insufficient to meet the *Daubert* standard. *E.g.*, *Allison v. McGhan Medical Corp.*, 184 F.3d 1300, 1316 (11<sup>th</sup> Cir. 1999); *In re: TMI Litigation Cases Consolidated II*, 911 F.Supp. 775 (M.D. Penn. 1996); *WadeGreaux v. Whitehall Labs*, 874 F.Supp. 1441, 1483 (D.V.I. 1994). Stotz's reference to "discussions" and "other real estate professionals" could not be more evasive or vague and, certainly, is an exemplar of "anecdotal evidence." Likewise, the professionalism of Stotz's reliance on a pleading filed by Blue Hills in other litigation as a source of information is, at minimum, highly questionable. Moreover, the ephemerality and dubiousness of the putative basis of Stotz's opinion leaves the Court unable to perform its "gate keeper" function of evaluating the relevancy or reliability of information Stotz purportedly obtained from "discussions" with unidentified "real estate professionals." Exhibit "A", Stotz Report, p. 13.

5. Stotz does not quantify any alleged diminution in the value of the Property as a result of the garage in neither his expert report nor in his deposition. Having failed and refused to quantify the alleged diminution of value in either his expert report or during deposition testimony, he should not be allowed to "sand bag" Blue Hills at trial by either quantifying the amount – for the first time – or using it as a "secret ingredient" in his valuation. *See, G.S.*

*Enterprises, Inc. v. Falmouth Marine*, 410 Mass. 262, 270-71 (1991). Absent quantification, his opinion is worthless as to any germane issues and, in fact, places his valuation of the Property in disrepute. Any valuation methodology that allows Stotz to add a significant “fudge factor” to his opinion based on purported conversations with unidentified “professionals” is highly suspect and lacks minimal indicia of reliability.

WHEREFORE, Blue Hills respectfully requests that this Court enter an order:

1. Barring introduction of any testimony by Eric S. Stotz as to the impact of an adjacent parking garage on the Property; and
2. Providing such other and further relief as is just and proper.

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

The undersigned counsel for Blue Hills certifies that she has conferred with counsel for Lender in a good faith attempt to resolve or narrow the issues presented by this Motion.

/s/Meredith A. Swisher

BLUE HILLS OFFICE PARK LLC, WILLIAM  
LANGELIER AND GERALD FINEBERG,  
By their attorneys,

/s/Meredith A. Swisher

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Dated: September 11, 2006  
#345096 v3/14500/9985

# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,

Plaintiff, Defendant-in-Counterclaim.

v.

Civil Action No. 05-CV-10506 (WGY)

J.P. MORGAN CHASE BANK, as Trustee for the  
Registered Holders of Credit Suisse First Boston  
Mortgage Securities Corp., Commercial Mortgage  
Pass-Through Certificates, Series 1999-C1,

and

CSFB 1999-C1 ROYALL STREET, LLC;

Defendants, Plaintiffs-in-Counterclaim,

v.

WILLIAM LANGELIER and GERALD  
FINEBERG,

Defendants-in-Counterclaim.

**EXPERT REPORT OF ERIC S. STOTZ**

**Introduction.**

I was retained by counsel for J. P. Morgan Chase Bank, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1 and CFSB 1999-C1 Royall Street LLC for my opinion on certain matters relating to real estate value in the property located at 150 Royall Street located in Canton, Massachusetts. In particular, I was retained by counsel for the following tasks.

1) I was asked to give an opinion of the value of the subject property as of October 18, 2004. In October, 2004, I prepared an appraisal report of the subject property. As first stated in

that report, it is my opinion that the value of the subject property, as of October 18, 2004, was \$15,000,000. This opinion is explained and supported in Part 1 of this document following, and a complete copy of the appraisal prepared in October 2004 is attached as additional support.

2) I was asked to give an opinion of the value of the subject property as of August 8, 2003. I prepared a retrospective estimate as a complete appraisal report, in summary format. My estimate relies upon much of the findings in my October 2004 appraisal report as outlined above and attached hereto for the basis of analysis. Based on this retrospective value analysis, which is detailed as Part 2 following, it is my opinion that the retrospective value of the subject property, as of August 8, 2003, was \$14,500,000.

3) I was asked to give an opinion of the impact on value, if any, of a parking garage built in conjunction with the property located adjacent to the west of the subject property. In particular, I was asked to review a zoning complaint brought by the subject property owners concerning the construction of this parking garage, re-visit the subject property, and form an opinion as to any likely impact on the subject property's value due to the construction of this garage. This is detailed as Part 3 as follows.

**Part 1) Opinion of Value as of October 18, 2004**

I prepared a complete, self-contained appraisal report on the subject property for Lennar Partners, on behalf of JPMorgan Chase Bank, a New York banking corporation, as Trustee for the Registered Holders of Credit Suisse First Boston Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1 (Lennar). The report was dated October 28, 2004 (date of report submission). The stated purpose of this appraisal was to estimate the "as-is" fee simple value of the property as of October 18, 2004 (the actual date of inspection of the



property), as well as an as-stabilized value. The intended user of this report was Lennar, and the intended use of the report was to assist in internal decision making purposes. After thoroughly reviewing this report in connection with this assignment, it is my current opinion that the report was reasonable and the value well supported, and that the value of the subject property, as of October 18, 2004, was \$15,000,000. The reasons for my opinion are as follows.

At the time, suburban office market had been dramatically negatively impacted by the recession and high tech meltdown that had occurred in the previous years, but that market conditions were appearing to improve, with a cautiously positive outlook for the future. This cautious outlook formed the basis for the 18-month vacancy estimated to find a single tenant occupant for the subject building within the report.

The income approach was the primary approach employed in developing my opinion of value. The projected future cash flows were prepared using ARGUS lease by lease analysis software, which is widely used and accepted within the industry. Assumptions regarding the lease up of the subject building were made based on the market analysis information, with the assumption that the most likely tenant for the subject property would be a single-tenant, entire building user. The rental stream was not expected to start until March, 2006, which represented a vacancy period of 18 months from the October, 2004 effective as-is date. The rental rate for the tenant was estimated at \$12.25 per square foot on a triple net basis (all operating expenses are passed through to the tenant), and building expenses were estimated based on historical levels and industry standards, with certain adjustments to reflect the vacancy in the early years of the analysis.

The cash flow prepared begins in October, 2004, with the first year ending September, 2005 (fiscal year 2005), and was taken out through fiscal 2017. This cash flow was used as to produce the incomes used in the discounted cash flow methodology. A direct capitalization analysis was not used for the as-is scenario because of the extreme variations in the cash flows over the first few years due to the then-current vacancy in the building and necessary expenditures to secure a tenant. My conclusion of the income approach was \$14,800,000 for the as-is analysis.

A sales comparison approach was developed using five sales of comparable office properties within a reasonable range of distance from the subject property. This approach estimated a value as-stabilized first, then adjusted the stabilized value by the present value of the lost income and costs to achieve stabilized occupancy (as taken from the income approach) to arrive at an estimate of as-is value. The five sales ranged 120,960 to 345,410 square feet in size, and sold for between \$114 and \$145 per square foot of building area prior to adjustments.

Adjustments were applied to these sales to more closely compare them to the subject property. These adjustments included market conditions (appreciation/depreciation), Location, Building Size, Quality of Construction, and Land to Building Ratio. The adjustment process reduced the range of values to between \$102 and \$112 per square foot. Sales #1 (adjusted price of \$104.50 per square foot) and Sale 4 (adjusted price of \$102.26 per square foot) were considered most comparable to the subject, and we concluded at a unit value of \$103 per square foot, which resulted in a total value for the reported size of the subject building of 274,000 square feet at roundly \$28,200,000 on an as-stabilized basis.

The as-stabilized value estimate was reduced by the present value of the loss in income and the tenant improvement and leasing commission costs involved with obtaining a tenant for the building. The loss in income was calculated by comparing the estimated first three years actual income per the ARGUS analysis with the deflated stabilized (third year) cash flow amounts. The costs were taken directly from the ARGUS analysis, and totaled over \$7 million for tenant improvements (based on an assumption of \$25 per square foot) and almost \$2 million for leasing commissions (based on \$7 per square foot of lease area).

The total present value of the cost adjustment via this was \$11,000,000, which was deducted from the as-stabilized value as shown above of \$28,200,000 to result in an as-is value estimate via the sales comparison approach of \$17,200,000.

The two approaches used were reconciled, with most weight on the income approach, to an as-is value of \$15,000,000. As indicated previously, the complete, self-contained report is presented in its entirety as attached to this document.

**Part 2) Retrospective Value as of August 8, 2003**

**Introduction/Background**

I was asked to form an opinion of the retrospective market value of the marketable interest in the subject property as of August 8, 2003. This “retrospective appraisal” is presented herein in summary format, with the reader referenced to the “2004 appraisal” attached hereto. Even though the 2004 appraisal has an effective date of value subsequent to the effective date of value of this retrospective appraisal, the majority of information contained in the 2004 appraisal is still relevant to this analysis, and, in the interest of economy, only those sections that are considered significant to this retrospective appraisal will be laid out within the body of this report as follows.

**Interest Appraised:**

The interest appraised as of the effective date of appraisal (August 8, 2003), is the leased fee interest, due to the lease that was in place at the time to Equiserve. Leased fee interest is defined as “An ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others. The rights of lessor (leased fee owner) and leased fee are specified by contract terms contained within the lease” by the Appraisal Institute in its Dictionary of Real Estate Appraisal.

**Summary of Lease:**

As of the effective date of appraisal, August 8, 2003, the former tenant in the building was still in occupancy. A summary of the lease is presented as follows:

Landlord: Royall Associated Realty Trust  
 Tenant: The First National Bank of Boston  
 (assigned through various entities, with the most recent being Equiserve)  
 Start Date: August 1, 1989  
 Term/End Date: 10 Years / July 1, 1999  
 Extensions: Two five-year extensions at 90% of Fair Market Rent (as of 3 months prior to the commencement of the extension term)

**Rent Schedule:**

Years 1-5 \$13.95 per rentable square foot  
 Years 6-10 \$17.75 per rentable square foot

Expense Basis: NNN  
 Tenant Improvements: \$15.00 per rentable square foot  
 Leased Area: 198,139 square feet (initially, subsequent Lease Amendments increased this amount - see below.)

**Subsequent Amendments:**

Space/ Amend. #	Eff. Date	S.F.	Cumulative Occ. S.F.	Rent/ S.F.	Annual Rent
Original	8/1/1989	198,139	198,139	\$17.75	\$3,516,967
1	1/30/1990	7,144	205,283	\$17.75	\$126,806
2	5/1/1993	13,903	219,186	\$4.00	\$55,612
3	11/1/1990	26,842	246,028	\$17.75	\$476,446
4	6/1/1994	5,293	251,321	\$17.75	\$93,951
5	8/12/1996	10,066	261,387	\$9.00	\$90,594
6	8/15/1997	1,924	263,311	\$9.00	\$17,316
7	4/3/2000	No additions, place responsibility for operations on tenant.			
			Effective		
			Rent as of	\$16.63	\$4,377,692
			7/31/1999		

First Option Rent: \$15.30 per rentable square foot

August 1, 1999 - July 31, 2004

(per rent payment request dated April 12, 2002 from property manager to tenant (Blue Hill Document #5267))

This lease provides the rental revenue for the retrospective appraisal analysis for the period from August 2003 through July 31, 2004.

**Regional, Local Area & Neighborhood Data / Market Considerations**

The effective date of appraisal for this analysis (August 8, 2003) is roundly 13.5 months earlier than the 2004 appraisal attached. As of August 8, 2003, the general consideration was that the recession was over, but the overall regional and local economy had yet to “gain traction” for growth, as evidenced primarily by flat or negative job growth. In addition, the suburban office market had been negatively impacted during the early 2000’s, with over 5.2 million square feet of negative absorption in 2001 and over 2.3 million square feet of negative absorption in 2002. With these statistics most recently available, the general outlook was for continued softness in the suburban office market that would extend through the next several years. This was a less favorable outlook, in general, than was alluded to in the 2004 appraisal report.

**Income Approach – As-Is (as of the effective date of appraisal, August 8, 2003)**

In this income approach, the cash flow was modified to begin as of the effective date of appraisal, August 8, 2003. The ARGUS lease by lease analysis program used for the original valuation was used as a basis for the analysis. As of the date of appraisal, the landlord was aware that the tenant would not be renewing their lease. This is in line with the analysis done for the original appraisal (the tenant had vacated the property), and I have assumed a similar lease-up date for the entire building as of March 1, 2006 subsequent to the current tenant vacating the property as of July 31, 2004. The rent for the re-leasing of the property was assumed to be at the same 10-year term, at \$12.25 per square foot basis as used in the 2004 appraisal, with a \$1.00 step as of the 6<sup>th</sup> year, on a triple net basis.

For building expenses, a similar level of expenses as in the 2004 appraisal were estimated, with the amounts adjusted downward for the difference in time by a 3% per year CPI assumption. The Equiserve lease calls for the building operating expenses to be reimbursed by the tenant, which I have accounted for. Subsequent to the tenant leaving, however, the reimbursement will cease until the building is re-leased. All other costs were adjusted as necessary as well. The adjusted cash flow is presented on the following page.

The following cash flow timing begins in August, 2003, corresponding to the effective date of appraisal. As the property was expected to be vacated in 1 year, then re-leased in March, 2006 (corresponding to the 2004 appraisal), the cash flow was extended out past the future lease turnover to estimate the reversion value of the property for the discounted cash flow analysis. Also, a direct capitalization analysis was not used for this valuation due to the expected severe variations in cash flow in the early years of the projections.

# Cash Flow Projection from ARGUS – (Start Date August 2003)

## SCHEDULE OF PROSPECTIVE CASH FLOW

In Inflated Dollars for the Fiscal Year Beginning 8/1/2003

For the Years Ending	Year 1 Jul-2004	Year 2 Jul-2005	Year 3 Jul-2006	Year 4 Jul-2007	Year 5 Jul-2008	Year 6 Jul-2009	Year 7 Jul-2010	Year 8 Jul-2011	Year 9 Jul-2012	Year 10 Jul-2013	Year 11 Jul-2014	Year 12 Jul-2015	Year 13 Jul-2016	Year 14 Jul-2017
POTENTIAL GROSS REVENUE														
Base Rental Revenue	\$4,028,658	\$3,235,181	\$3,295,167	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,911,175	\$4,687,720
Absorption & Turnover Vacancy		(\$3,235,181)	(\$1,896,625)										(\$1,171,930)	
Scheduled Base Rental Revenue	\$4,028,658		\$1,398,542	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$3,356,500	\$2,739,245	\$4,687,720
Base Rental Step Revenue								\$114,167	\$274,000	\$274,000	\$274,000	\$274,000	\$159,833	
Expense Reimbursement Revenue														
Operating Expenses	\$1,410,080		\$716,831	\$1,932,913	\$2,121,195	\$2,184,831	\$2,250,376	\$2,317,887	\$2,387,424	\$2,459,046	\$2,532,818	\$2,608,802	\$1,803,041	\$2,512,671
RE Taxes	\$501,310		\$140,347	\$437,172	\$559,438	\$620,313	\$649,147	\$669,621	\$688,680	\$709,340	\$730,620	\$752,539	\$578,956	\$796,389
Management Fee	\$126,260		\$55,942	\$156,960	\$175,584	\$179,132	\$181,844	\$188,308	\$194,473	\$197,710	\$200,538	\$206,593	\$141,218	\$207,927
Shuttle Bus	\$71,229		\$36,659	\$100,093	\$110,647	\$113,967	\$117,386	\$120,907	\$124,535	\$128,271	\$132,119	\$136,082	\$92,869	\$129,590
Total Reimbursement Revenue	\$2,108,879		\$949,779	\$2,627,138	\$2,966,864	\$3,099,243	\$3,198,753	\$3,295,723	\$3,395,112	\$3,494,367	\$3,596,087	\$3,704,016	\$2,616,084	\$3,648,557
TOTAL POTENTIAL GROSS REVENUE	\$6,137,537		\$2,348,321	\$5,983,638	\$6,323,364	\$6,454,743	\$6,555,253	\$6,765,390	\$7,025,612	\$7,124,867	\$7,226,587	\$7,334,516	\$5,515,162	\$6,336,277
General Vacancy	(\$306,877)			(\$299,182)	(\$316,168)	(\$322,737)	(\$327,763)	(\$338,320)	(\$351,281)	(\$356,243)	(\$361,329)	(\$366,726)	(\$416,814)	
Collection Loss	(\$153,438)		(\$58,708)	(\$149,591)	(\$168,084)	(\$161,369)	(\$163,881)	(\$165,160)	(\$175,640)	(\$178,122)	(\$180,665)	(\$183,363)	(\$137,879)	(\$208,407)
EFFECTIVE GROSS REVENUE	\$5,677,222		\$2,289,613	\$5,534,865	\$5,849,112	\$5,970,637	\$6,063,609	\$6,255,910	\$6,498,691	\$6,590,502	\$6,684,593	\$6,784,427	\$5,377,283	\$7,711,056
OPERATING EXPENSES														
Operating Expenses	\$1,884,654	\$194,119	\$968,940	\$2,059,413	\$2,121,195	\$2,184,831	\$2,250,376	\$2,317,887	\$2,387,424	\$2,459,046	\$2,532,818	\$2,608,802	\$2,075,049	\$2,767,678
RE Taxes	\$563,723	\$335,250	\$432,000	\$600,319	\$680,319	\$696,417	\$649,147	\$669,621	\$688,680	\$709,340	\$730,620	\$752,539	\$775,115	\$796,389
Management Fee	\$170,317		\$68,688	\$166,046	\$175,473	\$179,119	\$181,908	\$187,767	\$194,961	\$197,715	\$200,538	\$203,533	\$161,318	\$231,332
Shuttle Bus	\$98,309		\$43,990	\$107,425	\$110,647	\$113,967	\$117,386	\$120,907	\$124,535	\$128,271	\$132,119	\$136,082	\$104,693	\$144,370
TOTAL OPERATING EXPENSES	\$2,717,003	\$529,369	\$1,367,392	\$2,764,884	\$3,007,634	\$3,084,334	\$3,198,817	\$3,295,182	\$3,395,600	\$3,494,372	\$3,596,095	\$3,700,956	\$3,116,175	\$3,941,749
NET OPERATING INCOME	\$2,960,219	(\$529,369)	\$922,221	\$2,769,981	\$2,841,478	\$2,886,303	\$2,864,792	\$2,963,728	\$3,103,091	\$3,096,130	\$3,088,498	\$3,083,471	\$2,261,108	\$3,769,307
LEASING & CAPITAL COSTS														
Tenant Improvements			\$7,004,501										\$2,447,505	
Leasing Commissions			\$1,961,260										\$2,635,769	
Reserves	\$52,937	\$54,525	\$56,161	\$57,845	\$59,581	\$61,368	\$63,209	\$65,106	\$67,059	\$69,071	\$71,143	\$73,277	\$75,475	\$77,739
TOTAL LEASING & CAPITAL COSTS	\$52,937	\$54,525	\$9,021,922	\$57,845	\$59,581	\$61,368	\$63,209	\$65,106	\$67,059	\$69,071	\$71,143	\$73,277	\$75,475	\$77,739
CASH FLOW BEFORE DEBT SERVICE & TAXES	\$2,907,282	(\$583,894)	(\$8,099,701)	\$2,712,136	\$2,781,897	\$2,824,935	\$2,801,583	\$2,898,622	\$3,036,032	\$3,027,059	\$3,017,355	\$3,010,194	(\$2,897,641)	\$3,691,568



**Discounted Cash Flow Analysis**

The following table summarizes then-current discount and capitalization rates as obtained from investment surveys for that time period (August, 2003).

**Summary of Investment Rates**

Korpacz Survey of Real Estate Investors  
Second Quarter, 2003

		<u>Discount Rates</u>	<u>Going In Cap. Rates</u>	<u>Rev. Cap. Rates</u>
Suburban Offices	Range	9.50% - 13.00%	8.00% - 12.00%	8.75% - 12.00%
	Average	11.13%	9.80%	9.90%
Boston Offices	Range	9.00% - 13.00%	7.25% - 11.25%	8.00% - 11.00%
	Average	11.01%	9.25%	9.43%

RERC Real Estate Investment Survey  
Spring 2003

		<u>Discount Rates</u>	<u>Going In Cap. Rates</u>	<u>Rev. Cap. Rates</u>
Suburban Offices	Range	10.00% - 12.00%	9.00% - 10.00%	9.30% - 10.50%
	Average	11.40%	9.50%	9.90%

These rates were generally in line with those as outlined in the 2004 appraisal report, with the rates in the 2004 appraisal report being slightly lower as investors lowered their return requirements over the time difference. However, it was known that the only tenant would be vacating in one year's time, and there were no definitive prospects for the releasing of the subject building at this time. Based on this, I have used a discount rate of 12.25% and a reversionary capitalization rate of 10.0% for the discounted cash flow analysis, as summarized in the following table.

**Discounted Cash Flow Analysis**

Year #	Fiscal Year	Cash Flow	Reversion Cap Rate	Cost of Sale	Net Reversion	Discount Rate 12.25%	PV of Cash Flow & Reversion
1	2004	\$2,907,282				0.89087	\$2,590,006
2	2005	(\$583,894)				0.79365	(\$463,406)
3	2006	(\$8,099,701)				0.70704	(\$5,726,773)
4	2007	\$2,712,136				0.62988	\$1,708,308
5	2008	\$2,781,897				0.56114	\$1,561,023
6	2009	\$2,824,935				0.49990	\$1,412,181
7	2010	\$2,801,583				0.44534	\$1,247,668
8	2011	\$2,898,622				0.39674	\$1,150,008
9	2012	\$3,036,032				0.35345	\$1,073,073
10	2013	\$3,027,059				0.31487	\$953,142
11	2014	\$3,017,355				0.28051	\$846,402
12	2015	\$3,010,194				0.24990	\$752,243
13	2016	(\$2,897,641)				0.22263	(\$645,093)
13	2016	\$3,691,568	10.00%	2.00%	\$36,177,366	0.22263	\$8,054,052
							<u>\$14,512,834</u>

Rounded Value: \$ 14,500,000

As shown, the estimated value via the income approach for the subject property is roundly \$14,500,000.

I did not perform either a sales comparison approach nor a cost approach for this valuation analysis, due to the specified use of the appraisal and the widely varying incomes expected at the subject (no comparable sales with similar income patterns were found), and the fact that the income approach is the best methodology to arrive at a value for an income producing property such as the subject.

**3) Impact of Adjacent Parking Garage on Subject Property**

I was asked to form an opinion on the impact of the construction of a parking garage that was built at 250 Royall Street, the adjacent property to the west, which partially blocked the view of the subject from Route 128 (also known in the area as either I-93 to the east

or I-95 to the west). I drove the interstate highway system in both directions, and was able to view the subject building's southwestern corner from both directions. However, it is apparent that the new parking garage at the adjacent property did obstruct a portion of the subject's view from the highway, and conversely from the building to the highway.

I also reviewed the minutes of a meeting of the Canton Zoning Board of Appeals dated May 22, 2003, as well as the Complaint filed with the Superior Court of Massachusetts on June 9, 2003 concerning this issue.

In my professional opinion, any structure that is built that interferes with the view of another structure from a major highway, or any structure that add significantly to the traffic congestion in an area, will have a detrimental impact on the value of the existing structure. However, it is extremely difficult to accurately measure the impact. My opinion is based upon the general sum of my experience in the valuation and analysis of real estate and real estate markets, and not upon any single event. The portion of my experience that directly forms my opinion on this matter comes primarily from various discussions with other real estate professionals.

The construction of the garage adjacent to the subject property will have a negative impact on the subject due to the following factors:

- 1) Lack of visibility from a highway result in less exposure for any exterior signs advertising the tenant/company occupying the subject building, resulting in the loss of recognition from the passing public. Also, the lack of a view of the

building from a highway makes finding the building more difficult for potential customers and/or new or potential employees.

- 2) The obstruction caused by the construction of a nearby building can negatively impact the subject building tenants by creating a less desirable view resulting in less employee satisfaction. Also, in the case of the subject, the view of the major intersection of I-95 and I-93 was blocked. This intersection's congestion causes many traffic back ups in the local area, and without a view of the intersection, it becomes more difficult for the employees in the subject building to getting caught in this traffic.
- 3) Finally, the construction of the garage, according to the documents reviewed, would add significantly more cars to the adjacent site than current zoning requires. This excess capacity, if allowed, would increase traffic congestion in the area due to the higher number of cars in the immediate area.

These issues all negatively impacted the value of the subject building, and this was alluded to in the Complaint filed with the court by the subject property's owner (page 8, paragraph 37).

#### **Qualifications of Eric Stotz, Publications, other Work, and Compensation**

Currently, I am President and Principal of SCA (Stotz Commercial Appraisal, Inc.), which I formed in September 2005, and am active in the appraisal of all types of real estate. I have a Bachelor of Science from the Whittemore School of Business at the University of New Hampshire in 1981. I worked for the Sheraton Hotel Corporation in

various management positions in New York City for over three years, and then worked for Pannell Kerr Forster, an accounting firm, primarily providing consulting services and appraisal services for hotels and other types of property from 1984 through 1991. I have been actively involved in the appraisal of real estate since 1986. I was admitted to membership in the Appraisal Institute (MAI designation) in 1992. I was a senior employee or partner in the firm of Bonz and Company, Inc. (and predecessor firms) from 1991 through September 2005, where I managed a staff of up to 8 appraisal professionals. During my career, I have appraised numerous office buildings, as well as numerous other property types.

I have not published any professional papers in the preceding ten years, and I have not acted as an expert witness at trial or deposition in the previous four years. My compensation for this work is \$125 per hour for non-deposition or trial time, and \$250 per hour for time being deposed or during trial testimony.

Signed:

A handwritten signature in dark ink, appearing to read "Eric S. Stotz", written in a cursive style.

Eric S. Stotz, MAI

Date: March 31, 2006

# EXHIBIT B

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1 subject building. And then subsequent to that we  
2 went to the exterior, and I think we drove around it  
3 because it was -- you know, it's a pretty big  
4 building. So we drove around it and toured the  
5 exterior of the building as well.

6 Q. Do you know what time of day it was?

7 A. I believe it was morning, maybe 9 o'clock,  
8 9:30.

9 Q. And you drove -- where were you coming  
10 from?

11 A. Probably the city, from our offices.

12 MR. FALBY: Use your memory. Don't  
13 guess.

14 THE WITNESS: Okay.

15 A. My best recollection is we came from the  
16 city.

17 Q. All right. So you come down what, the  
18 Expressway, and then up 95?

19 A. I don't recall which direction we went, if  
20 it was that way or out the Turnpike or down 128,  
21 which would be the longer way, but...

22 Q. Did you get stuck in any traffic jams, or  
23 did you experience any congestion?

24 A. I think the normal backups -- if it was --

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1 MR. FALBY: If you don't remember which  
2 way you came --

3 A. Yeah. So, no, I don't recall.

4 Q. You toured the exterior of the building?

5 A. Yes.

6 Q. Did you look next door at 250 Royall?

7 A. Yes.

8 Q. Did you see the garage?

9 A. Yes.

10 Q. How come that's not mentioned here?

11 A. It's not part of the subject property.

12 Q. Okay. How come -- you will agree with me  
13 that in your October 18, 2004 report, there is not  
14 one single mention of the garage over at 250 Royall,  
15 correct?

16 A. I can't say that with certainty, if it was  
17 part of the property there. I'm not sure if it was  
18 mentioned in the sale write-up or the information  
19 used in the sales comparison approach. I mean, I  
20 can spend some time looking for it, but --

21 Q. You can do that, but you can do that at the  
22 break. But you will agree with me that the presence  
23 of the garage did not factor into the value that you  
24 arrived at as of October 18, 2004, correct?

Page 88

1 A. No, it was an adjacent property that was  
2 existing at the time of the appraisal.

3 Q. And you didn't factor in any congestion  
4 that would have reportedly resulted from the  
5 presence of this garage next door?

6 A. No, not at this time, no.

7 Q. But you did in your rebuttal report -- I'm  
8 sorry, you did in your expert report, correct?

9 MR. FALBY: Objection to that  
10 characterization of what he did in his report.

11 MR. MCGLYNN: Well, we will get to that.

12 Q. But you will agree with me, sir, that in  
13 your expert report you have indicated that there  
14 would be a decline, a diminution in the value of 150  
15 Royall because of the existence of the garage; isn't  
16 that correct?

17 A. Yes, I stated that, yes.

18 Q. But you can't quantify it?

19 A. Right.

20 Q. And nothing had changed in terms of the  
21 site or the building, the garage on the adjacent  
22 site, between the time that you inspected the  
23 property on October 18, 2004, and the date that you  
24 issued your expert report, correct?

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1 MR. FALBY: I'll object. I didn't  
2 understand that question. You can answer.

3 A. Okay. That's correct, but in my expert  
4 report I was asked to give an opinion of the impact  
5 of the construction of the garage, since it was  
6 existing at the time of the October 2004 report, it  
7 was there, and I was not -- it in no way -- it  
8 existed at the time, and I appraised the subject  
9 property with that garage there, and that was it.

10 In my expert report, I was asked to give  
11 an opinion on the impact of the construction of the  
12 garage. So you look at the subject property before  
13 it was built and after it was built. It's a  
14 separate exercise.

15 Q. I'm not sure I understand what you are  
16 saying. Are you saying you are -- putting aside  
17 your modification valuation, your valuation as of  
18 October 18, 2004, was that this building was worth  
19 15 million bucks?

20 A. Yes.

21 Q. And you considered all those things that  
22 needed to be considered in order to arrive at that  
23 figure of 15 million, correct?

24 A. Yes.

23 (Pages 86 to 89)

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1 Q. And you indicate on page 35 that there were  
2 no physical factors that are noted that would  
3 negatively impact on the value, correct?  
4 A. Beyond what was appraised.  
5 Q. Where does it say "beyond what was  
6 appraised"?  
7 A. From my point of view, it's understood in  
8 the statement.  
9 Q. I understand, but, you know, you will agree  
10 with me that the reader may not have the benefit of  
11 what's in your mind, only what you have written,  
12 correct?  
13 MR. FALBY: Objection.  
14 A. Correct.  
15 Q. Now, sir, in your expert report you're  
16 saying that the presence of the garage would result  
17 in some unquantified reduction in the value of 150  
18 Royall Street, correct?  
19 A. Yes.  
20 Q. Now, just so I understand what you are  
21 saying, you mean that it would be a reduction in the  
22 value that you determined as of October 18, 2004, to  
23 be \$15 million?  
24 A. No.

Page 91

1 Q. So you're saying that it would just have  
2 some effect, adverse effect, on the value of the  
3 property?  
4 MR. FALBY: I object to your  
5 characterization which implies two alternatives, and  
6 I don't think you can characterize the actual facts.  
7 MR. MCGLYNN: Bruce, all I need you to  
8 do is say your objection, and we will move on.  
9 Q. Now, sir, can I have an answer to my  
10 question?  
11 A. My expert report, I think it states the  
12 opinion that the construction of the garage had a  
13 negative impact on the value of the subject  
14 property.  
15 Q. And -- have you finished your answer?  
16 A. Yes.  
17 Q. And that negative impact would have been  
18 included in your valuation as of October 18, 2004,  
19 correct?  
20 A. The garage was existing at the time of my  
21 appraisal, as of October 2004, and it was considered  
22 in the appraisal.  
23 Q. And how do you know it was considered in  
24 the appraisal?

Page 92

1 A. Because it was existing. It's part of the  
2 office park, it's part of the neighborhood. It --  
3 Q. Have you finished your answer?  
4 A. Yes.  
5 Q. All right. But you will agree with me that  
6 you don't point out the presence of this garage in  
7 your October 18, 2004 report, correct?  
8 MR. FALBY: Objection. I think that you  
9 have asked that and he's answered it and he said he  
10 thinks he talks about it in some place.  
11 MR. MCGLYNN: We will get to that.  
12 Q. But I just need an answer to my question.  
13 MR. FALBY: You keep asking the same  
14 question. Do you expect to get a different answer?  
15 Objection.  
16 A. No.  
17 MR. FALBY: Well, don't say no. You  
18 said you talked about it in another place, right?  
19 THE WITNESS: Yes, I could have.  
20 MR. FALBY: Or may have.  
21 MR. MCGLYNN: Bruce, I have to put you  
22 under oath and start asking you questions.  
23 Q. Now, sir, take a look, if you would, at  
24 your rebuttal report.

Page 93

1 MR. FALBY: I will just note for the  
2 record your questions are unfair; and unlike some  
3 experts, Mr. Stotz is not a professional expert. He  
4 doesn't have experience with people asking unclear  
5 questions.  
6 Q. Do you have your rebuttal report there,  
7 sir?  
8 A. Yes.  
9 Q. All right. Would you turn to page 12, 13,  
10 and 14, in particular 13 at the top. You say at the  
11 top -- I'm not going to read the whole thing, but if  
12 you want to read it into the record --  
13 MR. FALBY: Are you in the rebuttal  
14 report to which you referred Mr. Stotz?  
15 MR. MCGLYNN: He's got it. You don't  
16 have a copy?  
17 MR. FALBY: It doesn't look like you are  
18 in it, but whatever.  
19 MR. MCGLYNN: I'm sorry, the expert  
20 report, not the rebuttal report.  
21 Q. Okay, sorry, and at page 13 --  
22 A. Yes.  
23 Q. -- you say, "it is apparent that the new  
24 parking garage at the adjacent property did obstruct

24 (Pages 90 to 93)

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# EXHIBIT C

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<p style="text-align: right;">Page 94</p> <p>1 a portion of the subject's view from the highway, 2 and conversely from the building to the highway," 3 correct? 4 A. Yes. 5 Q. You will agree with me that that's your 6 finding, correct? 7 A. Yes. 8 Q. And that's not contained in your October 18 9 report, correct? 10 A. Not those words, no. 11 Q. Not anything relating to the garage 12 obstructing the view of the building from the 13 highway, correct? 14 MR. FALBY: Objection, mischaracterizes 15 his testimony. 16 Q. You may answer. 17 A. That's correct, nothing about that. 18 Q. And going on, you say, "In my professional 19 opinion" -- page 13 -- "any structure that is built 20 that interferes with the view of another structure 21 from a major highway, or any structure that adds 22 significantly to the traffic congestion in an area, 23 will have a detrimental impact on the value of the 24 existing structure"; do you see that?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. So you relied on what was contained in a 2 complaint, correct? 3 A. And my general experience in those matters. 4 Q. Well, I'm just looking at what you say. 5 You say "in my professional opinion." Is that what 6 you said? 7 A. Yes. 8 Q. All right. You don't say "in my 9 professional opinion, I can read what's contained in 10 a complaint," do you? 11 MR. FALBY: Objection. It says what it 12 says, and you just mischaracterized what he said, 13 and it's unfair to the witness. 14 MR. MCGLYNN: No, it's not unfair. 15 These are perfectly legitimate questions. 16 MR. FALBY: No, they're not legitimate 17 questions. You are arguing with the witness. 18 MR. MCGLYNN: I'm cross-examining the 19 witness. 20 MR. FALBY: You are arguing with him to 21 no effect, no point. 22 MR. MCGLYNN: Well, we will let the 23 record decide that. 24 Q. Your statement here is it's in your</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Yes. 2 Q. You will agree with me that neither that 3 statement nor anything similar to that was contained 4 in your October 18 report? 5 A. That's true. 6 Q. Did you observe -- strike that. Did you do 7 any traffic studies with respect to your 8 professional opinion as expressed on page 13 of your 9 expert report? 10 A. No. 11 Q. Did you consult with a traffic consultant? 12 A. No. 13 Q. Did you stand out there during rush hour 14 and see what the alleged traffic congestion in the 15 area was? 16 A. No. My primary source for that statement, 17 which refers to before the garage was built and then 18 after the garage was built, the fact that it would 19 add traffic, came from the complaint that was filed 20 by the subject building owners during that -- during 21 the process of approving the garage with the town of 22 Canton where they did state that the increased 23 traffic would have a detrimental effect on their 24 building.</p>	<p style="text-align: right;">Page 97</p> <p>1 professional opinion, correct? 2 A. Yes. 3 Q. You also indicate -- 4 MR. FALBY: Let me just note for the 5 record that you have just established something. In 6 his professional opinion, any structure that adds 7 significantly to the traffic congestion will have an 8 impact, and he said that he relied, for a portion of 9 that, that it would have an impact, on the 10 statements of your clients. 11 MR. MCGLYNN: Bruce, you know the rules. 12 Make your objection, no coaching of the witness. 13 MR. FALBY: I'm actually not coaching 14 the witness. What I am trying to do is just make 15 sure that the record is clear. 16 MR. MCGLYNN: Well, you know what? You 17 will have plenty of time to redirect this witness 18 after I finish, but no more coaching. 19 MR. FALBY: I'm not coaching, Peter. 20 I'd appreciate it if you would stop 21 mischaracterizing what he says, which is what you 22 are doing. 23 Q. All right. Let's go on, sir. You also 24 indicate on page 14, Paragraph No. 2, that "the</p>

# EXHIBIT D

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Page 94	<p>1 a portion of the subject's view from the highway, 2 and conversely from the building to the highway," 3 correct? 4 A. Yes. 5 Q. You will agree with me that that's your 6 finding, correct? 7 A. Yes. 8 Q. And that's not contained in your October 18 9 report, correct? 10 A. Not those words, no. 11 Q. Not anything relating to the garage 12 obstructing the view of the building from the 13 highway, correct? 14 MR. FALBY: Objection, mischaracterizes 15 his testimony. 16 Q. You may answer. 17 A. That's correct, nothing about that. 18 Q. And going on, you say, "In my professional 19 opinion" -- page 13 -- "any structure that is built 20 that interferes with the view of another structure 21 from a major highway, or any structure that adds 22 significantly to the traffic congestion in an area, 23 will have a detrimental impact on the value of the 24 existing structure"; do you see that?</p>	Page 96	<p>1 Q. So you relied on what was contained in a 2 complaint, correct? 3 A. And my general experience in those matters. 4 Q. Well, I'm just looking at what you say. 5 You say "in my professional opinion." Is that what 6 you said? 7 A. Yes. 8 Q. All right. You don't say "in my 9 professional opinion, I can read what's contained in 10 a complaint," do you? 11 MR. FALBY: Objection. It says what it 12 says, and you just mischaracterized what he said, 13 and it's unfair to the witness. 14 MR. MCGLYNN: No, it's not unfair. 15 These are perfectly legitimate questions. 16 MR. FALBY: No, they're not legitimate 17 questions. You are arguing with the witness. 18 MR. MCGLYNN: I'm cross-examining the 19 witness. 20 MR. FALBY: You are arguing with him to 21 no effect, no point. 22 MR. MCGLYNN: Well, we will let the 23 record decide that. 24 Q. Your statement here is it's in your</p>
Page 95	<p>1 A. Yes. 2 Q. You will agree with me that neither that 3 statement nor anything similar to that was contained 4 in your October 18 report? 5 A. That's true. 6 Q. Did you observe -- strike that. Did you do 7 any traffic studies with respect to your 8 professional opinion as expressed on page 13 of your 9 expert report? 10 A. No. 11 Q. Did you consult with a traffic consultant? 12 A. No. 13 Q. Did you stand out there during rush hour 14 and see what the alleged traffic congestion in the 15 area was? 16 A. No. My primary source for that statement, 17 which refers to before the garage was built and then 18 after the garage was built, the fact that it would 19 add traffic, came from the complaint that was filed 20 by the subject building owners during that -- during 21 the process of approving the garage with the town of 22 Canton where they did state that the increased 23 traffic would have a detrimental effect on their 24 building.</p>	Page 97	<p>1 professional opinion, correct? 2 A. Yes. 3 Q. You also indicate -- 4 MR. FALBY: Let me just note for the 5 record that you have just established something. In 6 his professional opinion, any structure that adds 7 significantly to the traffic congestion will have an 8 impact, and he said that he relied, for a portion of 9 that, that it would have an impact, on the 10 statements of your clients. 11 MR. MCGLYNN: Bruce, you know the rules. 12 Make your objection, no coaching of the witness. 13 MR. FALBY: I'm actually not coaching 14 the witness. What I am trying to do is just make 15 sure that the record is clear. 16 MR. MCGLYNN: Well, you know what? You 17 will have plenty of time to redirect this witness 18 after I finish, but no more coaching. 19 MR. FALBY: I'm not coaching, Peter. 20 I'd appreciate it if you would stop 21 mischaracterizing what he says, which is what you 22 are doing. 23 Q. All right. Let's go on, sir. You also 24 indicate on page 14, Paragraph No. 2, that "the</p>

# EXHIBIT E

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Page 102	<p>1 MR. MCGLYNN: I didn't say on the</p> <p>2 original exhibit.</p> <p>3 Q. Did you conduct any measurements to</p> <p>4 determine how much of the view from 150 Royall was</p> <p>5 obstructed by this garage?</p> <p>6 A. No.</p> <p>7 Q. Did you get up on the second floor of 150</p> <p>8 Royall to see whether or not the view from the</p> <p>9 top -- the second floor of 150 Royall was obstructed</p> <p>10 by the garage?</p> <p>11 A. During the tour we were on the second</p> <p>12 floor, but I do not recall if we were in the exact</p> <p>13 corner or the area where the view was obstructed.</p> <p>14 Q. You knew there were trees there as well,</p> <p>15 correct?</p> <p>16 A. I don't know that.</p> <p>17 Q. There were trees that were on -- in front</p> <p>18 of -- strike that -- in between 150 Royall and Route</p> <p>19 95?</p> <p>20 A. What period of time are you talking?</p> <p>21 Q. When you did your field work.</p> <p>22 A. There are trees to the south, I believe. I</p> <p>23 don't believe there are trees or substantial trees</p> <p>24 between the subject property and the parking garage.</p>	Page 104	<p>1 have an impact on employee satisfaction?</p> <p>2 Q. Yes.</p> <p>3 A. Compared to a view of the garage?</p> <p>4 Q. No trees.</p> <p>5 A. No trees?</p> <p>6 MR. FALBY: Object to the ambiguity of</p> <p>7 the question.</p> <p>8 Q. You may answer.</p> <p>9 A. I have not -- I'd need to consider that a</p> <p>10 little further, I think, before I answer that</p> <p>11 question. It's not something I'd want to answer off</p> <p>12 the top of my head.</p> <p>13 Q. So is it your testimony today, sir, that if</p> <p>14 the garage was not there, that your valuation of the</p> <p>15 building as of October 18, 2004, would be greater</p> <p>16 than \$15 million?</p> <p>17 A. I can't say that with any certainty because</p> <p>18 that wasn't the case as of that date.</p> <p>19 Q. Well, the garage was there at the time,</p> <p>20 correct?</p> <p>21 A. Yes, but you are asking me to assume</p> <p>22 something that was not in place. I don't really</p> <p>23 know the true extent that -- you know, what was</p> <p>24 there in place of the garage prior to that, so it's</p>
Page 103	<p>1 Q. Take a look at page 40 of your October</p> <p>2 report.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Exhibit 16. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see where it shows little black</p> <p>7 arrows?</p> <p>8 A. Yes.</p> <p>9 Q. What's the squiggly marking on the adjacent</p> <p>10 lot? What does that signify?</p> <p>11 A. That signifies some kind of growth.</p> <p>12 Q. Some kind of growth. All right. And that</p> <p>13 growth is in between the building and Route 128,</p> <p>14 correct?</p> <p>15 MR. FALBY: Tiny little bushes.</p> <p>16 A. To the -- I'd call that the southwest, yes.</p> <p>17 Q. Would those have an impact on -- how do you</p> <p>18 describe it?</p> <p>19 MR. MCGLYNN: I'm going to try and find</p> <p>20 his exact language in his expert report.</p> <p>21 MR. FALBY: Employee satisfaction?</p> <p>22 Q. -- employee satisfaction?</p> <p>23 MR. MCGLYNN: Thank you, Bruce.</p> <p>24 A. You are asking me if a view of trees would</p>	Page 105	<p>1 difficult for me to say the impact on my estimate if</p> <p>2 the garage wasn't there.</p> <p>3 Q. So what you are saying in your expert</p> <p>4 report, at least as it relates to this garage, is</p> <p>5 that it had a negative impact, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You just can't quantify it?</p> <p>8 A. That's correct.</p> <p>9 Q. And you can't tell us whether or not it</p> <p>10 would mean that the -- that without the garage, the</p> <p>11 building would have been worth more than the \$15</p> <p>12 million that you valued it as of October 18, 2004?</p> <p>13 A. That's correct, I couldn't opine.</p> <p>14 Q. And your discussions or conversations with</p> <p>15 Polcari -- excuse me, with Donovan and Needle, they</p> <p>16 are not reflected in any notes or memoranda or</p> <p>17 minutes that you or anybody at Bonz &amp; Company</p> <p>18 prepared, correct?</p> <p>19 MR. FALBY: Objection, asked and</p> <p>20 answered.</p> <p>21 A. The -- I will say that my recollection of</p> <p>22 the -- after I looked through the workpapers that</p> <p>23 were provided by Bonz &amp; Company in association with</p> <p>24 the 2004 report, I did see a sheet recording some</p>

27 (Pages 102 to 105)

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# EXHIBIT F



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# EXHIBIT G

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1 subject building. And then subsequent to that we  
2 went to the exterior, and I think we drove around it  
3 because it was -- you know, it's a pretty big  
4 building. So we drove around it and toured the  
5 exterior of the building as well.

6 Q. Do you know what time of day it was?

7 A. I believe it was morning, maybe 9 o'clock,  
8 9:30.

9 Q. And you drove -- where were you coming  
10 from?

11 A. Probably the city, from our offices.

12 MR. FALBY: Use your memory. Don't  
13 guess.

14 THE WITNESS: Okay.

15 A. My best recollection is we came from the  
16 city.

17 Q. All right. So you come down what, the  
18 Expressway, and then up 95?

19 A. I don't recall which direction we went, if  
20 it was that way or out the Turnpike or down 128,  
21 which would be the longer way, but...

22 Q. Did you get stuck in any traffic jams, or  
23 did you experience any congestion?

24 A. I think the normal backups -- if it was --

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1 A. No, it was an adjacent property that was  
2 existing at the time of the appraisal.

3 Q. And you didn't factor in any congestion  
4 that would have reportedly resulted from the  
5 presence of this garage next door?

6 A. No, not at this time, no.

7 Q. But you did in your rebuttal report -- I'm  
8 sorry, you did in your expert report, correct?

9 MR. FALBY: Objection to that  
10 characterization of what he did in his report.

11 MR. MCGLYNN: Well, we will get to that.

12 Q. But you will agree with me, sir, that in  
13 your expert report you have indicated that there  
14 would be a decline, a diminution in the value of 150  
15 Royall because of the existence of the garage; isn't  
16 that correct?

17 A. Yes, I stated that, yes.

18 Q. But you can't quantify it?

19 A. Right.

20 Q. And nothing had changed in terms of the  
21 site or the building, the garage on the adjacent  
22 site, between the time that you inspected the  
23 property on October 18, 2004, and the date that you  
24 issued your expert report, correct?

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1 MR. FALBY: If you don't remember which  
2 way you came --

3 A. Yeah. So, no, I don't recall.

4 Q. You toured the exterior of the building?

5 A. Yes.

6 Q. Did you look next door at 250 Royall?

7 A. Yes.

8 Q. Did you see the garage?

9 A. Yes.

10 Q. How come that's not mentioned here?

11 A. It's not part of the subject property.

12 Q. Okay. How come -- you will agree with me  
13 that in your October 18, 2004 report, there is not  
14 one single mention of the garage over at 250 Royall,  
15 correct?

16 A. I can't say that with certainty, if it was  
17 part of the property there. I'm not sure if it was  
18 mentioned in the sale write-up or the information  
19 used in the sales comparison approach. I mean, I  
20 can spend some time looking for it, but --

21 Q. You can do that, but you can do that at the  
22 break. But you will agree with me that the presence  
23 of the garage did not factor into the value that you  
24 arrived at as of October 18, 2004, correct?

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1 MR. FALBY: I'll object. I didn't  
2 understand that question. You can answer.

3 A. Okay. That's correct, but in my expert  
4 report I was asked to give an opinion of the impact  
5 of the construction of the garage, since it was  
6 existing at the time of the October 2004 report, it  
7 was there, and I was not -- it in no way -- it  
8 existed at the time, and I appraised the subject  
9 property with that garage there, and that was it.

10 In my expert report, I was asked to give  
11 an opinion on the impact of the construction of the  
12 garage. So you look at the subject property before  
13 it was built and after it was built. It's a  
14 separate exercise.

15 Q. I'm not sure I understand what you are  
16 saying. Are you saying you are -- putting aside  
17 your modification valuation, your valuation as of  
18 October 18, 2004, was that this building was worth  
19 15 million bucks?

20 A. Yes.

21 Q. And you considered all those things that  
22 needed to be considered in order to arrive at that  
23 figure of 15 million, correct?

24 A. Yes.

23 (Pages 86 to 89)

FARMER ARSENAULT BROCK LLC

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# EXHIBIT H

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